



COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (“PRA”), this notice announces that the Information Collection Request (“ICR”) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (“OIRA”) of the Office of Management and Budget (“OMB”) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice’s publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the website’s search function. Comments can be entered electronically by clicking on the “comment” button next to the information collection on the “OIRA Information Collections Under Review” page, or the “View ICR—Agency Submission” page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the “Commission” or “CFTC”) by clicking on the “Submit Comment” box next to the descriptive entry for OMB Control No. 3038-0111, at <https://comments.cftc.gov/FederalRegister/PublicInfo.aspx>.

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's Regulations.¹ The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Dina Moussa, Attorney Advisor, Market Participants Division, Commodity Futures Trading Commission, (202) 418-5696 or dmoussa@cftc.gov, and refer to OMB Control No. 3038-0111.

SUPPLEMENTARY INFORMATION:

Title: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements (OMB Control No. 3038-0111). This is a request for an extension of a currently approved information collection.

¹ 17 CFR 145.9.

Abstract: Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,² amended the Commodity Exchange Act (“CEA”), 7 U.S.C. 1 *et seq.*, to add, as Section 4s(e) thereof, provisions concerning the setting of initial and variation margin requirements for swap dealers (“SDs”) and major swap participants (“MSPs”).³ Each SD and MSP for which there is a Prudential Regulator, as defined in Section 1a(39) of the CEA,⁴ must meet margin requirements established by the applicable Prudential Regulator, and each SD and MSP for which there is no Prudential Regulator (“Covered Swap Entities” or “CSEs”) must comply with the Commission’s Regulations governing margin on all swaps that are not centrally cleared.

With regard to the cross-border application of the Commission’s margin rules, Section 2(i)⁵ of the CEA provides the Commission with express authority over activities outside the United States relating to swaps when certain conditions are met. Section 2(i) of the CEA provides that the provisions of the CEA relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of the CEA that was enacted by the Wall Street Transparency and Accountability Act of 2010.

On May 31, 2016, the Commission published the Commission’s Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements (“Final Rule”) addressing the

² Pub. L. 111-023, 124 Stat. 1376 (2010).

³ 7 U.S.C. 6s(e).

⁴ 7 U.S.C. 1a(39).

⁵ 7 U.S.C. 2(i).

cross-border application of its margin requirements for uncleared swaps applicable to CSEs.⁶ The Final Rule contains a collection of information under Commission Regulation 23.160(c) regarding requests for comparability determinations, and information collections regarding non-netting jurisdictions,⁷ and non-segregation jurisdictions.⁸

Under Commission Regulation 23.160(c)(1), a CSE that is eligible for substituted compliance or a foreign regulatory agency that has direct supervisory authority over one or more CSEs and that is responsible for administering the relevant foreign jurisdiction's margin requirements may request, individually or collectively, that the Commission make a determination that a CSE that complies with margin requirements in the relevant foreign jurisdiction would be deemed to be in compliance with the Commission's corresponding margin rule (a "comparability determination"). Once a comparability determination is made for a jurisdiction, it applies for all entities or transactions in that jurisdiction to the extent provided in the comparability determination, as approved by the Commission and subject to any conditions specified by the Commission. All CSEs, regardless of whether they rely on a comparability determination, remain subject to the Commission's examination and enforcement authority.

Commission Regulation 23.160(c)(2) requires that applicants for a comparability determination provide copies of the relevant foreign jurisdiction's margin requirements and descriptions of their objectives, how they differ from the margin policy framework for non-cleared, bilateral derivatives set forth by the Basel Committee on Banking

⁶ 81 FR 34818 (May 31, 2016).

⁷ As used in the adopting release, a "non-netting jurisdiction" is a jurisdiction in which a CSE cannot conclude, with a well-founded basis, that the netting agreement with a counterparty in that foreign jurisdiction meets the definition of an "eligible master netting agreement" set forth in Commission Regulation 23.151, and as described in Section II.B.5.b of the adopting release.

⁸ As used in the adopting release, a "non-segregation jurisdiction" is a jurisdiction where inherent limitations in the legal or operational infrastructure of the foreign jurisdiction make it impracticable for the CSE and its counterparty to post initial margin pursuant to custodial arrangements that comply with the Commission's margin rules, as further described in Section II.B.4.b of the adopting release.

Supervision and the International Organization of Securities Commissions, and how they address the elements of the Commission’s margin requirements. The applicant must identify the specific legal and regulatory provisions of the foreign jurisdiction’s margin requirements that correspond to each element and, if necessary, whether the relevant foreign jurisdiction’s margin requirements do not address a particular element.

Commission Regulation 23.160(d) includes a special provision for non-netting jurisdictions. This provision allows CSEs that cannot conclude after sufficient legal review with a well-founded basis that the netting agreement with a counterparty in a foreign jurisdiction meets the definition of an “eligible master netting agreement” set forth in Commission Regulation 23.151 to nevertheless net uncleared swaps in determining the amount of margin that they post, provided that certain conditions are met. In order to avail itself of this special provision, a CSE must treat the uncleared swaps covered by the agreement on a gross basis in determining the amount of initial and variation margin that it must collect, but may net those uncleared swaps in determining the amount of initial and variation margin it must post to the counterparty, in accordance with the netting provisions of Commission Regulations 23.152(c) and 23.153(d). A CSE that enters into uncleared swaps in “non-netting” jurisdictions in reliance on this provision must have policies and procedures ensuring that it complies with the special provision’s requirements, and maintain books and records properly documenting that all of the requirements of this exception are satisfied.

Commission Regulation 23.160(e) includes a special provision for non-segregation jurisdictions that allows non-U.S. CSEs that are Foreign Consolidated Subsidiaries (“FCS”) (as defined in Commission Regulation 23.160(a)(1)) and foreign branches of U.S. CSEs to engage in swaps in foreign jurisdictions where inherent limitations in the legal or operational infrastructure make it impracticable for the CSE and its counterparty to post collateral in compliance with the custodial arrangement

requirements of the Commission's margin rules, subject to certain conditions. In order to rely on this special provision, a FCS or foreign branch of a U.S. CSE is required to satisfy all of the conditions of the rule, including that (1) inherent limitations in the legal or operational infrastructure of the foreign jurisdiction make it impracticable for the CSE and its counterparty to post any form of eligible initial margin collateral for the uncleared swap pursuant to custodial arrangements that comply with the Commission's margin rules; (2) foreign regulatory restrictions require the CSE to transact in uncleared swaps with the counterparty through an establishment within the foreign jurisdiction and do not permit the posting of collateral for the swap in compliance with the custodial arrangements of Commission Regulation 23.157 in the United States or a jurisdiction for which the Commission has issued a comparability determination under Commission Regulation 23.160(c) with respect to Commission Regulation 23.157; (3) the CSE's counterparty is not a U.S. person and is not a CSE, and the counterparty's obligations under the uncleared swap are not guaranteed by a U.S. person; (4) the CSE collects initial margin in cash on a gross basis, and posts and collects variation margin in cash, for the uncleared swap in accordance with specific requirements; (5) for each broad risk category, as set out in Commission Regulation 23.154(b)(2)(v), the total outstanding notional value of all uncleared swaps in that broad risk category, as to which the CSE is relying on Commission Regulation 23.160(e), may not exceed 5 percent of the CSE's total outstanding notional value for all uncleared swaps in the same broad risk category; (6) the CSE has policies and procedures ensuring that it is in compliance with the requirements of this provision; and (7) the CSE maintains books and records properly documenting that all of the requirements of this provision are satisfied.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On August 5, 2022, the Commission published in the Federal Register notice of the proposed

extension of this information collection and provided 60 days for public comment on the proposed renewal, 87 FR 48001 (“60-Day Notice”). The Commission received no relevant comments on the 60-Day Notice.⁹

- *Burden Statement – Information Collection for Comparability Determinations:*

The Commission estimates that approximately 53 CSEs may request a comparability determination pursuant to Commission Regulation 23.160(c).¹⁰ The Commission notes that any foreign regulatory agency that has direct supervisory authority over one or more CSEs and that is responsible for administering the relevant foreign jurisdiction’s margin requirements may also apply for a comparability determination. However, once a comparability determination is made for a jurisdiction, it will apply for all entities or transactions in that jurisdiction to the extent provided in the determination, as approved by the Commission. To date, the Commission has issued a comparability determination for 3 jurisdictions.¹¹ Accordingly, the Commission estimates that it will receive requests from the 13 remaining jurisdictions within the G20,¹² in addition to Switzerland. The number of burden hours associated with such requests is estimated to be 40 hours. Accordingly, the respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 14.

⁹ The Commission received one comment from William J. Harrington on October 4, 2022. *See* Comment of William J. Harrington (Oct. 4, 2022). The comment is not relevant to the Commission’s Paperwork Reduction Act analysis, including its cost and hour burden estimates, but instead advocates for an unrelated change to the Commission Regulations referenced above.

¹⁰ Currently, there are approximately 108 swap entities provisionally registered with the Commission. The Commission estimates that of the approximately 108 swap entities that are provisionally registered, approximately 53 are CSEs for which there is no Prudential Regulator, and are therefore subject to the Commission’s margin rules.

¹¹ *See* Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 63376 (Sep. 15, 2016); Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 82 FR 48394 (Oct. 18, 2017); and Comparability Determination for Australia: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12908 (Apr. 3, 2019). The Commission subsequently amended its comparability determination for Japan. *See* Amendment to Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12074 (Apr. 1, 2019).

¹² The Group of 20 (“G20”) is comprised of foreign leaders and central bank managers from the top 19 countries with the largest economies along with the European Union.

Estimated Average Burden Hours Per Respondent: 40.

Estimated Total Annual Burden Hours: 560.

Frequency of Collection: Once.

There are no capital costs or operating and maintenance costs associated with this collection.

- *Burden Statement – Information Collection for Non-Netting Jurisdictions:*

The Commission is revising its estimate of the burden for this collection to reflect the current number of registrants subject to the Commission's margin requirements for uncleared swaps. Specifically, the Commission estimates that approximately 53 CSEs may rely on Commission Regulation 23.160(d).¹³ Furthermore, the Commission estimates that these CSEs would incur an average of 10 annual burden hours to maintain books and records properly documenting that all of the requirements of this exception are satisfied (including policies and procedures ensuring compliance). Accordingly, the respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 53.

Estimated Average Burden Hours Per Respondent: 10.

Estimated Total Annual Burden Hours: 530.

Frequency of Collection: Once; As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

- *Burden Statement – Information Collection for Non-Segregation Jurisdictions:*

The Commission estimates that there are eight jurisdictions for which the first two conditions specified above for non-segregation jurisdictions are satisfied and where FCSs and foreign branches of U.S. CSEs that are subject to the Commission's margin rules

¹³ See n.9, *supra*. Because all of these CSEs are eligible to use the special provision for non-netting jurisdictions, the Commission estimates that 53 CSEs may rely on Commission Regulation 23.160(d).

may engage in swaps. The Commission estimates that approximately 12 FCSs or foreign branches of U.S. CSEs may rely on Commission Regulation 23.160(e) in some or all of these jurisdictions. The Commission estimates that each FCS or foreign branch of a U.S. CSE relying on this provision would incur an average of 20 annual burden hours to maintain books and records properly documenting that all of the requirements of this provision are satisfied (including policies and procedures for ensuring compliance) with respect to each jurisdiction as to which they rely on the special provision. Thus, based on the estimate of eight non-segregation jurisdictions, the Commission estimates that each of the approximately 12 FCSs and foreign branches of U.S. CSEs that may rely on this provision will incur an estimated 160 average burden hours per year (*i.e.*, 20 average burden hours per jurisdiction multiplied by 8). Accordingly, the respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 12.

Estimated Average Burden Hours Per Respondent: 160.

Estimated Total Annual Burden Hours: 1,920.

Frequency of Collection: Once; As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 20, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

